

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of the City of Fremont to Construct a Pedestrian/Bicycle Path at Grade Across the Warm Springs Subdivision and the Milpitas Subdivision Union Pacific Railroad Company Branch Lines in the City of Fremont, Alameda County, State of California

Application 01-05-001  
(Filed May 1, 2001)

**SCOPING MEMO AND RULING OF  
ASSIGNED COMMISSIONER**

**Summary**

This ruling sets forth the procedural schedule, assigns a principal hearing officer, and addresses the scope of the proceeding. This ruling follows a prehearing conference (PHC) held on September 12, 2001, pursuant to Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure. (Rules)

**Background**

On May 1, 2001, the City of Fremont (Fremont) filed Application (A.) 01-05-001 requesting authority to construct two public pedestrian/bicycle crossings for one path at-grade crossing across the existing Warm Springs Subdivision and Milpitas Subdivision Union Pacific Railroad Company (Union Pacific) railroad tracks in Fremont. The application provides information on nearby public crossings, planned grade separation projects, and an explanation of the need for the proposed at-grade crossings. In addition, the application provides arguments why the proposed crossings must be at-grade and not constructed as grade separation projects. Fremont has indicated that the

construction and installation costs of the crossings will be met by the applicant, and that no funding will be requested of Union Pacific. The application requests the Commission to issue an order authorizing construction of the grade crossings subject to a Construction and Maintenance Agreement between Fremont and Union Pacific, and allow two years from the date of the order in which to construct the crossings.

On June 27, 2001, Union Pacific filed a Motion for Leave to File a Late Protest to Fremont's application, which included the protest. On July 19, 2001, Fremont filed a Reply to Union Pacific's Protest addressing the issues raised by Union Pacific and concurring on the need for warning devices at the crossings and assuming responsibility for payment for the installation costs. On August 3, 2001, the assigned Administrative Law Judge (ALJ) issued a ruling granting Union Pacific's Motion to file a late protest and setting a prehearing conference.

**Presiding Officer**

ALJ Bruce DeBerry is designated as the principal hearing officer (Rule 5(k) and 6(c)(1)).

**Category, Need for Hearing, and Scope of Proceeding**

Pursuant to Rule 6(a)(3), I affirm the Commission's preliminary determination in ALJ-176-2987 that this is a "ratesetting" proceeding and that hearings are required.

The scope of this proceeding is to determine whether to grant Fremont's request for authorization to construct the at-grade crossings, and the two year period for construction. A final Commission decision shall be scheduled for issuance during July, 2002, but in no event shall a final decision be issued any later than 18 months from the date that A.01-05-001 was filed.

### **Proposed Schedule**

At the prehearing conference on September 12, 2001, parties discussed a preliminary schedule, which was confirmed later in telephone conversations between Fremont, Union Pacific and the ALJ. The following adopted schedule reflects these discussions:

<b>Application Filed and Docketed</b>	<b>May 1, 2001</b>
<b>Protests Due</b>	<b>June 1, 2001</b>
<b>Prehearing Conference</b>	<b>September 12, 2001</b>
<b>Scoping Memo</b>	<b>November 6, 2001</b>
<b>Opening Testimony by Applicant</b>	<b>December 21, 2001</b>
<b>Opening Testimony by Other Parties</b>	<b>February 4, 2002</b>
<b>Evidentiary Hearings</b>	<b>February 26, 27, 28, 2002</b>
<b>Opening Briefs Due</b>	<b>March 29, 2002</b>
<b>Reply Briefs Due and Projected Submission</b>	<b>April 12, 2002</b>

### **Ex Parte Communications and Reporting Requirements**

This ruling contains a final determination that hearings are required in this proceeding. Therefore, ex parte communications are permitted consistent with the restrictions set forth in Rule 7(c), and subject to the reporting requirements set forth in Rule 7.1.

Therefore, IT **IS RULED** that:

1. This is a ratesetting proceeding.
2. Absent settlement, this matter is expected to go to hearing.
3. The issues to be addressed are established in this Ruling.
4. The schedule will be as set forth in this Ruling.
5. The ex parte rules as set forth in Rule 7 of the Commission's Rules Practice and Procedure apply to this proceeding.

6. The official service list as of this date is attached to this Ruling. Parties shall serve all filings on those on the then-current service list, including those identified as “State Service,” but not including those identified as Information Only.” The Commission will serve all rulings and orders on the entire list, including those listed “Information Only.”

Dated November 7, 2001, at San Francisco, California.

/s/ HENRY M. DUQUE

Henry M. Duque  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated November 7, 2001, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.